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ABSTRACT

This paper compares strengths and weaknesses of the Lexis and Westlaw computer assisted legal research systems. Their powerful full text document delivery capabilities are contrasted with their inherent limitations as information retrieval systems. The objective here is to alert users to the complexities of online legal searching and the necessity for evaluating these systems critically. Sample searches highlight the major differences between Westlaw's and Lexis's searching protocols. Comparable features of each system are examined to show how using them correctly improves the quality of search results and to warn of unintended consequences resulting from their misapplication. Specific features compared include field and segment searching, search query editing, browsing results, system employment of automatic equivalencies, and case retrieval shortcuts. Strategies for formulating searches that retrieve relevant cases, prevent the exclusion of potentially relevant cases, and help the searcher cope with database misspellings are considered. The economics of online searching is also addressed to consider which types of searches are performed most economically in each system. Although the searches performed during this study were limited to Ohio case law, they are adaptable for exploring the nuances of online searching in other state and federal jurisdictions. A reference guide for searching Ohio Case Law on both systems is appended, as well as a sample WEST key number index, case law examples of the Westlaw synopsis field, and sample Westlaw and Lexis opinions. (8 references) (Author/MAB)

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COMPARING LEXIS AND WESTLAW: USING SYSTEM FEATURES TO IMPROVE SEARCH RESULTS

A Master's Research Paper submitted to the
Kent State University School of Library Science
in partial fulfillment of the requirements
for the degree Master of Library Science

by

Rand J. Diamond

May, 1991

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ABSTRACT

This paper compares strengths and weaknesses of the Lexis and Westlaw computer assisted legal research systems. Their powerful full t~xt document delivery capabilities are contrasted with their inherent limitations as information retrieval systems. The objective here is to alert users to the complexities of online legal searching and the necessity for evaluating these systems critically.

Sample searches highlight the major differences between Westlaw's and Lexis's searching protocols. Comparable features of each system are examined to show how using them correctly improves the quality of search results and to warn of unintended consequences resulting from their misapplication.

Specific features compared include field and segment searching, search query editing, browsing results, system employment of automatic equivalencies, and case retrieval shortcuts. Strategies for formulating searches that retrieve relevant cases, prevent the exclusion of potentially relevant cases, and help the searcher cope with database misspellings are considered. The economics of online searching is also addressed to consider which types of searches are performed most economically in each system.

Although the searches performed during this study were limited to Ohio case law, they are adaptable for exploring the nuances of online searching in other state and federal jurisdictions.

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I. Introduction

The purpose of this paper is to alert Westlaw and Lexis users to the comparative strengths and weaknesses of each system. As full text online retrieval systems, they offer powerful document delivery capabilities. As information systems, they are more limited. Their potential for providing useful information varies according to the searching abilities of individual users. These complex systems require regular usage to master search protocols and system features.

II. Literature Review

Much of the comparative literature has focused on the economics of searching. Although an important and related concern, this issue should not overshadow quality concerns. Advocates of either system can easily develop examples of searches that are more economically performed on one system than the other. For example, in a recent article in Law Office Economics and Management, Julie Gotch compared Westlaw's and Lexis's pricing structures and concludes that "Lexis is cheaper most of the time," without addressing the effect of the searcher's skill level.[1] Implicit in her conclusion is that searchers are equally knowledgeable about both systems. To the contrary, most online users have neither the opportunity nor the initiative to master the complexities and subtleties of one, let alone two systems. Even Lexis would be hard pressed to contend that its system is more economical than Westlaw in the hands of someone

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[1]Julie Gotch, "Comparing Costs -- Westlaw & LEXIS," Law Office Economics and Management 30 (1989-90): 406-12.

with advanced Westlaw searching skills, but only a crude understanding of Lexis.

Cary Griffith champions Westlaw as the more economical system. He acknowledges, however, that varying levels of searching skills can affect cost. Griffith recommends using both systems, keeping in mind how their different pricing structures favor particular types of research.[2]

In an article in California Lawyer, Fred Shapiro provides a checklist of the advantages of each system focusing on coverage, user-friendliness, quality of text, and other miscellaneous features.[3] His checklist is supplemented by law school students' impressions of both systems. Although subjective, Shapiro's analysis highlights the importance of evaluating these systems in terms of quality, not just economics.

Unfortunately, there is a dearth of literature examining the quality of search results. Previous research, although helpful in understanding and comparing search mechanics, fails to emphasize search strategies. Al Coco's comparison of searches performed using full text plus editorial enhancements with searches performed in full text only highlights the fundamental differences between Westlaw's and Lexis's searching philosophies.[4] This 1984 study,

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[2]Cary Griffith, "Cost Effective Computer-Assisted Legal Research, or When Two Are Better Than One," Legal Reference Services Quarterly 7 (Spring 1987): 3-13.

[3]Fred R. Shapiro, "Which Is Better, Lexis or Westlaw?" California Lawyer 8 (January/February 1988): 56-58.

[4]Al Coco, "Full-Text vs. Full-Text Plus Editorial Additions: Comparative Retrieval Effectiveness of the LEXIS and WESTLAW Systems," Legal Reference Services Quarterly 4 (Summer 1984): 27-37.

however, does not reflect many important changes and additions to both systems. Betty Howell provides a current comparison of Westlaw's and Lexis's search protocols and commands, but she does not attempt to define which features are best suited for different types of searches and information needs.[5] To devise successful search strategies, users must understand how system features and commands affect their search results.

Although this paper addresses economic concerns and search command mechanics, its orientation differs from previous research by examining these issues in the broader context of search strategy. This paper will help users improve the quality of search results by comparing system features and evaluating the advantages and disadvantages of their application to different types of searches. This analysis should encourage users to approach Westlaw and Lexis critically and to understand the complexities and limitations of both systems.

III. Case Reporting

Lexis and Westlaw each contain hundreds of files. Documents consist of primary and secondary materials. Primary sources include case law from all fifty states and federal courts, all federal statutes and regulations, most state statutes, and some state regulations. Secondary materials consist of selected legal treatises and law reviews.

Attorneys use judicial opinions (a/k/a/ cases or decisions) to

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[5]Betty Howell, "Lexis and Westlaw Quick Reference Guide," Legal Information Alert 9 (November/December 1990): S1-S15.

argue the merits of their clients' positions before judges and juries. They also rely on them to advise clients of the legal ramifications of a course of intended conduct. Law professors use them to teach students the art of legal reasoning.

Judicial opinions are organized and disseminated in several ways. They are available directly from the issuing court. Selected cases are published pursuant to state and federal law in government publications. They may be compiled, indexed, and published in private publications, such as West Publishing Company's National Reporter System. These private publications often add editorial enhancements to the text of opinions to facilitate access. Finally, opinions are produced online by West's Westlaw and Mead Data Central's Lexis.

Opinions which appear in private publications such as West's or in official government publications are referred to as either published or reported opinions. Cases which are obtained directly from the court but have not yet been published in a private or official reporter are called slip opinions. Not all cases are selected for publication; those decisions that the judges do not submit for print publication are called unreported opinions. Most states (Ohio excepted) do not permit litigants to rely on unreported cases or to cite them in arguments to the courts. Nevertheless, to meet the ever expanding appetite of voracious legal researchers, Westlaw and Lexis have carved out a lucrative market for themselves by including both reported and unreported opinions in their online systems.

IV. Scope of Study

Since nearly 90% of the decisions from the Ohio Courts of Appeals are unreported, there is a dearth of reported cases for researchers to rely on. Coupled with the fact that Ohio, unlike the majority of states, allows attorneys to cite unreported decisions, their availability on Lexis and Westlaw virtually mandates online research for Ohio attorneys. This paper focuses exclusively on researching case law from Ohio state courts, but its analysis is applicable to researching other state and federal court cases in both online systems. While the paper presumes that its readers have some familiarity with online searching, it does not presuppose detailed knowledge of either system. Both Westlaw's and Lexis's protocols share the lack of standardization found on rival online systems. Efforts have been made within the search examples to explain differences between the two products; however, this is not an online legal research primer. Readers in search of basic operation details should refer to the systems' documentation.

V. Search Protocols

Close attention must be paid to differences in search protocols between Westlaw and Lexis. A search for "slip and fall" cases involving injuries suffered on ice or snow laden surfaces illustrates the major differences.

Westlaw: "SLIP AND FALL" 243 hits

Lexis: SLIP AND FALL 500+ hits

Quotation marks are used in Westlaw for phrase searching.

Thus, in this search "AND" is disabled as a connector and is searched as part of the phrase. All 243 cases located discuss "slip and fall" lawsuits. Lexis, however, does not use quotation marks for phrase searching. "AND" is treated as a "noise word" (nonsearchable). In this Lexis search, "AND" operates as a connector. Because thousands of unreported Ohio appellate decisions in Lexis contain the phrase "slip opinion" in the case caption, this search retrieves irrelevant cases in which the word "fall" happens to appear in the same case as "slip opinion." Compare these search results with:

Westlaw: SLIP FALL 15,188 hits

Lexis: SLIP FALL 260 hits

Westlaw reads spaces between words as an "OR" connector. Here it searches for slip or fall, retrieving mostly irrelevant cases. Lexis searches consecutive words separated by a space as a phrase. Although Lexis ignores noise words, it will pick them up when they appear between consecutive searchable words. Thus, Lexis retrieves the phrase "slip fall" or any occurrence of noise words sandwiched between slip and fall, e.g., "slip and fall." Accordingly, the correct searches for slip and fall cases would be "SLIP AND FALL" in Westlaw, but SLIP FALL in Lexis.

Narrowing these results to slip and fall cases involving ice or snow requires using Westlaw's "Edit Query" and Lexis's "Modification" commands. After selecting "Edit Query" from the Westlaw function template, the system prompts you to edit. "Ice" or "snow" is then added to the edited query.

"SLIP AND FALL" & (ICE SNOW)

This search finds 129 cases. An additional edit query command further narrows the search results to 28 cases.

"SLIP AND FALL" & (ICE SNOW) & (SURFACE PAVEMENT)

This final search could just as easily have been performed in one step, but some prefer narrowing their searches in stages.

On Lexis, to narrow search results you enter "m" for "modify." The system prompts you to transmit your modification to your search request (this becomes search level 2), and reminds you that the modification must begin with a connector. Modifications to this search identical to those made for Westlaw's edit query are performed through level 3, yielding 29 cases, one more than Westlaw.

The major difference between the two systems' editing commands is that Lexis automatically saves search results from each level, while Westlaw discards prior results upon each new edit query request. A Lexis searcher could return to level 1 results at any time to review the 260 cases found under SLIP FALL by entering .d/1 (different level #1). The Westlaw searcher would have to rerun the original "SLIP AND FALL" search. This structural difference in the two systems is further explored in Section XII, Economic Considerations.

Alternative search strategies should always be considered when a high level of recall is desired. Relevant cases not containing the phrase "slip and fall" were missed in the searches described above. A Westlaw search for fall or fell in the same paragraph as ice or snow and in the same paragraph as pavement or surface but not

containing the word slip anywhere in the cases is styled as:

FALL FELL /P ICE SNOW /P PAVEMENT SURFACE % SLIP

and finds 37 additional cases.

VI. Full Text Searching

Initial expectations over the luxury of printing out the full text of Ohio court opinions are quickly tempered by the difficulty encountered in accessing relevant opinions. The computer offers no conceptual support; it treats every case containing your search terms equally, regardless of whether the court squarely addresses the issue your search terms represent or buries it meaninglessly in a dissenting judge's footnote. The computer does not recognize multiple meanings or uses of the same word. It is incapable of distinguishing between an opinion which assesses the jurisdictional ramifications of a corporation's permanent "address" and an opinion containing such common language as "the court will now 'address' defendant's objection to jurisdiction." The searcher must anticipate judges' choices of words, style, organization, and structure in drafting their opinions. Search queries must be specific to retrieve cases relevant to the searcher's legal and factual information needs, yet flexible to account for the vagaries of language and usage.

The difficulty in conducting an effective subject search on full text systems like Westlaw or Lexis is illustrated in the following example. An attorney needs Ohio case law in which punitive damage awards have been challenged because of improper jury instruction. An initial series of basic searches are run on Lexis.

1. PUNITIVE DAMAGE AND INSTRUCT!
2. PUNITIVE DAMAGE W/50 INSTRUCT!
3. PUNITIVE DAMAGE W/15 INSTRUCT!

The first search finds 723 cases. The second and third searches use the proximity connector to narrow the results to 327 and 225 cases, respectively. This recall is still too high and imprecise. Browsing several documents reveals that in most instances the search terms are serving a narrative, rather than analytical, function in the opinion. Although each of the retrieved cases meets the locational directive of the search query, most do not address the specific information need. The computer cannot identify the context in which the search terms arise in the opinion. It cannot separate those cases where the search terms are the subject of the judge's analysis from those where they are not at issue.

Additional search terms were added; however, the following search:

PUNITIVE DAMAGE W/35 INSTRUCT! W/10 IMPROPER! OR INCORRECT!

narrowed the results too much, finding only one case. To obtain more control over results, searches can be conducted in selected portions of documents as discussed below.

VII. Searching Selected Portions of Documents

Westlaw and Lexis divide their documents into searchable parts to be used as an alternative to, or in conjunction with, full text searching. Westlaw jargon refers to these searches as field searches; Lexis calls them segment searches. The user must be alert

to the benefits and drawbacks of using field restrictions and segment searches in performing research on Ohio case law.

(A) Names of Parties

To find a case by its name or to find all cases involving a particular party, you would use Lexis's NAME segment search or Westlaw's TITLE field search.

Lexis: NAME(JOHNSON AND WILLIAMS)

Westlaw: TITLE(JOHNSON AND WILLIAMS)

These searches find a total of four cases in which Johnson and Williams appear as named parties in the same case in each of the respective databases. Because of the common names, a date restriction could have been used. If a searcher was looking for a case involving these parties decided in 1990, the following searches would have located one case in each system.

Lexis: NAME(JOHNSON AND WILLIAMS) AND DATE 1990

Westlaw: TITLE(JOHNSON AND WILLIAMS) AND DATE (1990)

If the parentheses surrounding 1990 in the Westlaw search had been omitted, the date restriction would have been nullified since Westlaw treats a space between words as an "OR" connector. It is easy for users of both systems to confuse search protocols creating unintended search results.

A searcher could find out how many times State Farm Insurance Company has been a party to a lawsuit in Ohio.

Lexis: NAME(STATE FARM)

Westlaw: TITLE("STATE FARM")

If this search had been run without the appropriate field or segment restrictions, it would have searched full text, retrieving not only cases in which State Farm is a party, but also cases in which the courts cited previous decisions involving State Farm. Although this may provide useful information, it distorts the objective of determining how many times State Farm has been a litigant. Since "company" and "corporation" are frequently abbreviated in case captions, it is best to leave them out of name or title searches.

(B) Court

A COURT segment search in Lexis may restrict searches to one or any combination of the twelve Ohio Courts of Appeals (Ohio's intermediate courts, below the Ohio Supreme Court and above the common pleas trial courts). The following is a search for Tenth District (a/k/a Franklin County) cases involving claims for intentional infliction of emotional distress.

COURT (TEN OR TENTH OR FRANKLIN) AND EMOTIONAL DISTRESS

This search looks for occurrences of "emotional distress" anywhere in tenth district opinions. More than one Lexis segment or Westlaw field can be combined in a search. The following search would find Eighth District (Cuyahoga County) Court of Appeals decisions in which State Farm Insurance Company is a party.

Lexis: NAME(STATE FARM) AND COURT(EIGHT OR EIGHTH OR CUYAHOGA)

Both "eight" and "eighth" are included in the search to account for

gaps in Lexis's use of equivalencies. Although Lexis treats "eight" as the equivalent of "8" and "eighth" as the equivalent of "8th," the system does not recognize "eight" and "eighth" as equivalents. This discrepancy can cause searchers to miss cases.

COURT(EIGHTH)

This search finds over 14,000 Eighth District cases. It does not include, however, those cases that identify the court as the "Eight District."

COURT(EIGHT)

This second search locates 39 cases. These decisions are potentially lost to those who search only for COURT(EIGHTH). This problem is illustrated by the following searches to see if Pacific Chemical Products Company has been a litigant in the Eighth District.

1. NAME(PACIFIC CHEMICAL) AND COURT(EIGHTH)
2. NAME(PACIFIC CHEMICAL) AND COURT(EIGHT)
3. NAME(PACIFIC CHEMICAL) AND COURT(CUYAHOGA)

The first search finds no cases. The second search finds one, which is one of the 39 cases from Cuyahoga County that is styled "Eight Appellate District" rather than "Eighth Appellate District." The third search finds this case because both county names and appellate district numbers are included in Lexis's COURT segment.

To restrict searches in Lexis to Ohio Supreme Court decisions, the search is run in the OSUP file in the Ohio library. This file is limited to Ohio Supreme Court decisions and, consequently, is $3 less per search than the Ohio cases file which contains both Supreme

Court and courts of appeals opinions. Similarly, if searching only for courts of appeals opinions, the OAPP file is $4 less per search than the Ohio Cases file.

Westlaw's Ohio file structure and COURT field searching is less flexible than Lexis's. The Ohio cases database, OH-CS, combines courts of appeals and Supreme Court opinions (similar to Lexis's Cases file in its Ohio library). Unlike Lexis, Westlaw does not provide separate databases segregating the different court levels. Westlaw's COURT field restrictor is also less versatile than Lexis's COURT segment. Westlaw's field only distinguishes between Supreme Court and courts of appeals decisions. It does not distinguish between districts within the court of appeals level.

COURT(HIGH) & "EMOTIONAL DISTRESS"

This search finds emotional distress cases decided by the Ohio Supreme Court. To retrieve only courts of appeals decisions on this topic, the search must be altered.

COURT(LOW) AND "EMOTIONAL DISTRESS"

Searches can also be limited to a particular court of appeals on Westlaw by running a full text search.

COURT /S APPEALS /S CUYAHOGA

The problem with this search is that it will find not only decisions where "Cuyahoga County" appears in the case heading, but also cases where it appears in the text of opinions from other jurisdictions, which is not the objective of the search.

(C) Judges

This type of search is helpful for finding out how a judge has ruled in the past on a particular issue. This search would locate abortion cases authored by Justice Moyer of the Ohio Supreme Court.

Lexis: WRITTENBY(MOYER) AND ABORTION

Westlaw: JUDGE(MOYER) AND ABORTION

(D) Attorneys

This search would find cases involving your opposing counsel.

Lexis: COUNSEL(PERRY W/3 MASON)

Westlaw: ATTORNEY(PERRY W/3 MASON)

(E) Opinion

The OPINION field in Westlaw contains the text of the opinion as written by the judge. Additional components of the OPINION field in Westlaw include the court and docket information, attorneys' and judges' names, and concurring and dissenting opinions. In Lexis, the OPINION segment contains the majority opinion; dissenting and concurring opinions are contained in separate DISSENT and CONCUR segments. The OPINIONS segment combines all three.

(F) Westlaw Case Law Enhancements - Background

When West Publishing Company receives an opinion to be reported, its editors add certain editorial enhancements to the full text of the opinion which appear both in print and online. The additional material is contained in four fields, described below,

which are automatically searched with a full text search.

SYNOPSIS - A summary of a case.
HEADNOTE - Abstracts of each point of law in a case.
TOPIC - Index and classification information.
DIGEST - Combination of Topic and Headnote fields.

Editorial enhancements create additional entry points to opinions. Terms that appear in the enhancements may not appear in the text of the opinion. In Al Coco's study of the Lexis and Westlaw systems, he found that in more than fifty percent of the searches run, additional cases were found searching on full text with editorial additions, rather than the full text of the decision alone.[6]

The searcher must remember that these enhancements are only editorial search aids and do not constitute any part of the opinion. Thus, they are never to be cited to a court. They represent only the opinion of the editors at West Publishing as to what each case is about and how it breaks down to fit into West's predesigned topical classification scheme. For those familiar with other database producers and their indexing and abstracting online products, West's editorial enhancements can be easily analogized. There are over 400 topical legal categories, e.g., contracts, criminal law, evidence, etc., similar to the descriptors found in many of the Dialog files. Each topic is broken down into subcategories, each with an assigned key number. Under the topic "contracts," for instance, the subcategory "Offer and Acceptance in General" has been assigned key number 16.

Many topics have hundreds of key numbers. Key numbers are

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[6]Coco, "Full-Text vs. Full-Text Plus Editorial Additions," 27.

listed under their assigned topics in printed West digest volumes. Because topic and key numbers are uniform for every jurisdiction, any West digest volume will provide searchers with key numbers to search online. See Appendix B. Searchers must always check the supplementary pocket part to a digest volume for new key numbers assigned to a particular topic. As with any indexing or abstracting enterprise, it comes down to human judgment (which necessarily encompasses human bias) as to which key number is assigned to a particular aspect of an opinion. If the opinion is short and deals with only one issue, one key number may cover the entire opinion. If the opinion addresses several issues, it will be assigned separate key numbers for each discrete issue. Immediately below the topic and key number is a brief headnote (abstract) summarizing the particular point addressed. A synopsis of the whole case follows the parties and date of the opinion. The DIGEST field searches the topic (name or its numerical equivalent), key numbers, and headnotes, all of which precede the text of the opinion.

A comparison of the results of a full text search and that of a search limited to Westlaw's editorial material is instructive. The issue being searched is: What constitutes an offer under Ohio contract law? The following Westlaw full text search, despite using the narrow "same sentence" proximity connector, still retrieves too many cases, 902.

CONTRACT! /S OFFER

Because offer is a generic word, it is fraught with multiple meanings. The problem becomes how to isolate those cases where the legal meaning of offer is analyzed. Browsing through West's list of

topics, you can easily select "contracts" (topic number 95) and key number 16, Offer and Acceptance in General.

95K16 /P OFFER

This key number search retrieves eight cases. The language in the headnotes indicates that several of these cases address the question of what constitutes an offer for contractual purposes.

To expand the results, an alternative search could be performed.

TOPIC(CONTRACTS) /P OFFER!

This alternative would remove some of West's editorial input. By searching for occurrences of "offer" under any key number under the topic "contracts," rather than just occurrences under key number 16, this search would presumably retrieve cases that could have been included under 16, but that were placed elsewhere based on editorial discretion. For example, cases classified under the more narrow key number 18 ("Making and Communication of Offer") may also address the same issues which arguably could be classified under key number 16. Indexing is not an exact science and certainly many close decisions are made by West's editors. Legal reasoning is often accomplished through analogy to discrete factual situation. While one searcher may see a particular case as supporting his argument that certain real life negotiations involving his client constitute an offer, a West editor operating in a different context may not. Searchers utilizing editorial features must recognize the limitations of those features. They are not irrefutable sources of knowledge created in the vacuum of an all knowing computer, but rather the

representations of human judgment which should be viewed with a critical eye. Full text databases are powerful tools for document delivery, but tools to enhance retrieval of relevant material, such as West's editorial features, are still imperfect.

An even more important limitation regarding Ohio case law research is that Westlaw does not add any of the editorial features discussed above to unreported opinions included in its online database. Since only approximately 10% of Ohio Courts of Appeals decisions are currently reported, running a key number or topic search on Westlaw will miss the vast majority of appellate level cases by excluding unreported opinions. Unlike some other states, the Ohio Supreme Court Rule for the Reporting of Opinions 2(G) specifically allows the citation of "unofficially published opinions and unpublished opinions" and states that they "shall be considered persuasive authority on a court," provided the citing party attaches a copy to the brief and indicates any appellate disposition. Section 2(H) also permits these opinions to be cited by the courts of appeals for purposes of certifying a conflict question to the Ohio Supreme Court. Failure to run a full text search in addition to a key number search would exclude this substantial amount of relevant material.

To assure current results, a full text search also picks up slip opinions that will eventually be reported in West's print volumes. When West receives a slip opinion, it is first dumped into Westlaw without any editorial enhancements. This provides immediate online access to the text of the opinion. It is not searchable by fields, however, until the later editorial enhanced version replaces the original version.

(G) Westlaw Editorial Enhancements -- Comparison with Lexis SYLLABUS and HEADNOTE Segments

Unlike Westlaw, Lexis does not produce its own editorial enhancements other than partitioning cases into searchable segments. Nevertheless, for some jurisdictions, including Ohio, Lexis cases contain official syllabi and headnotes prepared under the direction of the court itself. These additions serve a legal purpose with respect to Ohio Supreme Court opinions and an editorial purpose with respect to courts of appeals decisions. As explained in the Supreme Court Rules for the Reporting of Opinions, "the syllabus of a Supreme Court opinion states the controlling point or points of law decided in and necessarily arising from the facts of the specific case before the Court for adjudication." Rep R. 1(B). Implicit from this statement is that if a statement in the text of an Ohio Supreme Court opinion conflicts with its syllabus, the latter is controlling. Contrast this with the treatment of a syllabus of a court of appeals opinion which "shall not be considered the controlling statement of either the point or points of law decided, or law of the case, but rather a summary for the convenience of the public and the Bar as a research and indexing aid." Rep. R. 2(F).

For Ohio Supreme Court cases, Westlaw's SYNOPSIS field consists of two parts: (1) the official court syllabus also found in the Lexis SYLLABUS segment, and (2) a summary of the case authored by West's editors. The Ohio researcher must remain sensitive to the crucial difference between the controlling language of the court syllabus and the noncontrolling language of Westlaw's case summary. See Appendix C. The headnotes found in Lexis's HEADNOTE field are drafted by the court, while the headnotes found in Westlaw's DIGEST

filed are authored by West editors.

Some unreported courts of appeals opinions contain headnotes and syllabi prepared by the court which are searchable through the HEADNOTE and SYLLABUS segments. For thoroughness, however, the Lexis searcher should run a full text search in addition to a HEADNOTE or SYLLABUS segment search to include screening of all unreported opinions.

Because the text of Westlaw's editorial enhancements and Lexis's headnotes and syllabi have different authors, similar queries run in both systems may yield different search results. For comparison, Westlaw and Lexis copies of Anilas v. Kern, a 1987 Ohio Supreme Court case, are reproduced in Appendix D. Anilas addresses the issue of when a state can exercise jurisdiction over a noncitizen. In legal jargon, the test typically applied is whether the defendant has sufficient minimum contacts with the foreign state; i.e., whether he transacts business, maintains bank accounts, etc. in the state, thus subjecting him to that state's jurisdiction.

The results of the following searches illustrate the volatility of field/segment searching.

Westlaw

1. SY("MINIMUM CONTACT" AND "PERSONAL JURISDICTION")
2. DI("MINIMUM CONTACT" AND "PERSONAL JURISDICTION")
3. TO(PRETRIAL PROCEDURE) /P "SUFFICIENT CONTACT"
4. "MINIMUM CONTACT"

The first search retrieves Anilas. Both "minimum contacts" and "personal jurisdiction" are found in the SYNOPSIS field, immediately following the case caption. The second search, however, does not

retrieve Anilas because, while the phrase "personal jurisdiction" is contained in the DIGEST field (part of the headnotes below the Westlaw topic "courts"), the phrase "sufficient contact" is used instead of "minimum contact." The third search also fails to retrieve Anilas because the topic West has assigned to this headnote is "courts," not "pretrial procedure." By incorrectly predicting which topic West would assign to the concept of minimum contacts, the searcher missed the Anilas case, despite correctly selecting the search term "sufficient contact" used by the headnote author to express "minimum contacts." A DIGEST field search for "sufficient contact" without a topic restriction would have found Anilas.

Finally, the fourth search also locates Anilas. The phrase "minimum contact" appears both in the SYNOPSIS field and in the text of the opinion. A full text search automatically searches all fields, editorial enhancements as well as the opinion.

Because of West's inconsistency in phrasing ("minimum contacts" in the synopsis, "sufficient contact" in the headnote), retrieval is less predictable if only one field or only one type of contact ("minimum" or "sufficient") is searched. Since the word "contact" in a legal context is somewhat limited to the concept of minimum or sufficient contacts, a search for "contact" alone would have retrieved Anilas from any field. Another alternative would be a multiple field search.

SY,DI(MINIMUM SUFFICIENT /S CONTACT)

This search looks for minimum or sufficient in the same sentence as contact(s) in either the synopsis or the digest fields.

Lexis

1. HEADNOTES(SUFFICIENT CONTACTS)

2. HEADNOTES(SUFFICIENT AND CONTACTS)

The first search does not find Anilas because the Lexis HEADNOTE segment contains the phrase "sufficient minimum contacts." The AND connector in the second search accounts for alternative word positions and does retrieve Anilas. In sum, field and segment searches must be constructed flexibly to ensure thorough results.

(H) Disposition

This Lexis segment can be used to track how often a judge's rulings have been affirmed or reversed by a higher court. The following search in the Ohio file finds out how often Judge Krupansky of the Eighth District (Cuyahoga County) Court of Appeals has been reversed by the Ohio Supreme Court.

DISPOSITION(REVERS! OR REMAND! OR VACAT! OR OVERRULE!) AND KRUPANSKY

Since many cases are affirmed in part and reversed in part, each opinion will have to be read to see which aspect of the Krupansky ruling was reversed.

Westlaw does not provide a separate disposition field, but it includes the same information in its SYNOPSIS field. Because the SYNOPSIS field usually provides a procedural history of the case from the lower court in addition to the disposition of the case at hand, accurate information about a judge's reversal record is harder to pinpoint in Westlaw than in Lexis. A search in Westlaw for

COURT(HIGH) & SY(REVERS! REMAND! VACAT! OVERRULE!) AND SY(KRUPANSKY)

will pick up not only Ohio Supreme Court opinions that reverse Krupansky, but also cases that affirm Krupansky but also mention her reversing the trial court's ruling. This will not happen in Lexis where the DISPOSITION segment is searched separately from any case history that might include Judge Krupansky's rulings.

VIII. Reviewing Search Results

Nothing is more frustrating to online searchers and end users than to print out a list of citations only to discover that most or all of them are useless. Therefore, it is essential to review at least some of your results before printing. Search results can be reviewed by (1) paging screen after screen of full text, a thorough but uneconomical method; (2) moving directly to each occurrence of a search term in a document; or (3) refining results further by performing searches within the retrieved documents, by far the most useful and cost effective method. At an average of approximately $.50 per minute, some searchers may be able to afford a page by page review of results on Lexis, but at $3.00 per minute, Westlaw makes this practice prohibitive in most cases.

Both systems improve their review capabilities by offering direct access to occurrences of search terms in retrieved documents. After performing your search, Westlaw takes you automatically to the first page of your first case. From there you can enter the "next page" command and either review the document page by page or hit the return key which advances you to the first page where one of your search terms occurs. In a 50-page document, the latter method may be very cost effective, especially if your search terms appear near the end of the document. This Westlaw feature is called "term mode."

Westlaw automatically puts you in term mode, but once you enter the next page command, you leave term mode and enter "page mode." To return to term mode, enter "t."

Lexis's version of term mode is called "KWIC" (Key Words In Context). Unlike term mode, which displays the entire text of the screen on which the terms are found, KWIC displays only a window of 25 words surrounding the search terms. The "Variable KWIC" command is used to increase this window, e.g., 100 VAR KWIC increases the window size to 100 words.

Finally, Westlaw's LOCATE command (LOC) and Lexis's comparable FOCUS command allow searching within search results. This is particularly helpful when searching for specific factual situations. Cases in which dog owners have been assessed punitive damages for injuring third parties are easily found with these commands.

Westlaw: DOG & "PUNITIVE DAMAGE"

This search finds 25 cases. In addition to the punitive damages issue, you may want to determine whether a photograph of the dog would be admissible in evidence.

Westlaw: LOC PHOTO! /S DOG

This command takes you directly to page four of the tenth case retrieved in the previous search where there is a discussion of the admissibility issue. The LLOC command provides a list of those cases within the search results that also contain locate terms.

LOCATE and Lexis's similar FOCUS command are powerful features. If the original search had been framed to include photograph,

(DOG & "PUNITIVE DAMAGE") (DOG & "PUNITIVE DAMAGE" & PHOTO!)

term mode reviewing in Westlaw would not have found the photograph case until each of the preceding nine cases had been reviewed. LOCATE thus allows searchers to index their search results. This is particularly helpful when retrieving a large number of cases in a general subject area. Instead of printing off 200 citations resulting from a search for "products liability" which are otherwise undistinguishable, LOCATE and FOCUS can identify which cases discuss specific issues within those 200 citations.

Information from citation lists can facilitate the review of search results. Citation lists for Ohio cases contain much more information on Lexis than Westlaw. Both services display citations from the highest court first in reverse chronological order. Lexis provides first and last names of parties. Westlaw only lists last names. Reviewing results with common last names, such as a divorce action between Jim and Mary Smith, is much easier on Lexis. Lexis also provides docket numbers in citation lists; Westlaw does not. For court of appeals decisions, Lexis identifies the district, e.g., "Eighth Appellate District, Cuyahoga County." Westlaw does not include this information. Finally, only Lexis citation lists provide the disposition of each case.

IX. Excluding Concepts (Not Terms)

Increasing search precision through use of Westlaw's "BUT NOT" (%) and Lexis's "AND NOT" connectors must be attempted cautiously or relevant documents will be lost. In this example, the searcher wants civil, not criminal, cases discussing Ohio Evidence Rule 803(6)

(admissibility of business records at trial). A Westlaw search for 803(6) finds 239 hits, most of which are criminal cases. Additional searches were run to narrow the results.

1. 803(6) % CRIM!
2. 803(6) % TOPIC(CRIMINAL)
3. 803(6) % TITLE(STATE)

This strategy creates several problems. The first search reduced the list to 147 citations, but it did not account for civil cases that incidentally contain the word "crime" or "criminal." For example, this search excludes a potentially relevant civil case, Drage v. Ameritrust, which discusses 803(6) but also contains this statement: "It is well established in Ohio that, on the trial of a case either civil or criminal, the weight to be given the evidence . . . ." The reverse side of this problem is that the search would retrieve irrelevant criminal cases, such as State v. Arledge, that do not contain either the word "crime" or "criminal."

The second search had virtually no effect, eliminating only 7 of the original 239 hits. This was because the remaining 232 cases were unreported appellate decisions which do not contain West's TOPIC fields; none of these opinions could be eliminated through a TOPIC field exclusion.

Since the plaintiff in most criminal cases is the State of Ohio, the third search excludes all cases in which 803(6) occurs in the opinion and the State is a party. This third search reduced the total to 148. The risk with this search, however, is that in excluding the word "state" in the case title, you may inadvertently exclude some civil cases where "state" is part of a corporate or

business name. State Farm Insurance Company alone is found 215 times in Westlaw's Ohio cases TITLE field.

X. Misspellings

Cases containing misspelled words are potentially lost forever. Unless the online system provides automatic equivalencies for common misspellings, relevant documents with misspellings will be missed. This is illustrated in a search for the term "summary judgment." Westlaw generates an automatic equivalency between "summary judgment" and "summary judgement." Thus, separate searches performed under each term yield identical results. Lexis does not treat these terms as automatic equivalencies. A Lexis search for the more common spelling of summary judgment retrieves over 12 000 cases, while searching for summary judgement finds only 18 cases. Any of these 18 cases that do not also include an occurrence of the more common spelling are likely to be missed.

When an opinion contains the incorrectly spelled "summary judgement," (SIC) is sometimes inserted immediately thereafter to indicate the misspelling. While the inclusion of (SIC) alerts the person reading the opinion to the misspelling, it fails to make the opinion accessible for searchers relying on the correct spelling only, unless that opinion also happens to include an occurrence of the term spelled correctly. Thomas Woxland, Director of the Northern Illinois University Law Library, recommends a solution to this problem.[7] "Database research could be improved if 'sic' would be

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[7]Thomas A. Woxland, "More on Misspellings in CALR Databases," Trends in Law Library Management and Technology 3 (February 1990): 1-3.

replaced by a statement such as: 'correctly spelled as . . . .'"

From the database producer's perspective, the cost of correcting these misspellings must be weighed against the database's reputation for accuracy among consumers. Correcting the spelling in some cases may be inappropriate. If the misspelling was the fault of the judge, presumably he or she would be glad to let Lexis serve as an extra proofreader to improve the decision's accuracy and accessibility. In one of the 18 cases located under the "summary judgement" search, however, the misspelling is quoted from a document submitted by one of the parties to the court. A spelling correction in this case would entail alteration of an official court record. In these instances, Lexis users would be best served if Lexis, like Westlaw, employed an automatic equivalency between "judgment" and "judgement." Lacking this function, searches on Lexis should be constructed to account for common alternative spellings.

Lexis: SUMMARY JUDGMENT OR SUMMARY JUDGEMENT

Note that the universal character (*) would be inappropriate here. When the asterisk is used within a term, it must be replaced with a character. The term JUDG*MENT would retrieve "judgement," but not "judgment."

Even on Westlaw, searches which anticipate and account for common possible misspellings are advised. A Westlaw search for "PUNITIVE DAMAGE" would retrieve hundreds of cases, but not those containing only the misspelled "punative damage." The universal character does work in this example. A search for "PUN*TIVE DAMAGE" would retrieve both "punitive damage(s)" and "punative damage(s)."

Searching "PUNATIVE DAMAGE" finds ten cases. Four of these

cases contain occurrences of both "punitive" and "punative," while six contain only "punative." The latter six are lost forever to those searching the correct spelling only. The four containing both spellings present additional retrieval problems.

An additional search term would often be connected to "punitive" using a proximity connector, rather than the "AND" connector. If the universal character is not employed in anticipation of misspellings, arbitrary results are obtained. The added search term may fall within the prescribed proximity to the correctly spelled occurrence of "punitive," and therefore be found, or it may fall within the prescribed proximity only to the incorrectly spelled (and not searched for) occurrence of "punative," and thus not be found.

Westlaw: "BAD FAITH" /S "PUNITIVE DAMAGE"

This search will not retrieve "bad faith" where it occurs within the same sentence as "punative damage." Even if the opinion contains the correct spelling elsewhere, it may not occur within the same sentence as "bad faith." Thus, the mere occurrences of both the correct and incorrect spellings in the same document do not assure that the document will be retrieved in typical searches using proximity connectors. It would be incongruous to suggest that searchers combat this problem by using the "AND" connector instead of a proximity connector. The cost in lost precision would generally outweigh the benefit of a few additional random hits. While strategic employment of the universal character alleviates the problem for misspellings which can be reasonably anticipated, such as "judgement" or "punative," many more, unfortunately, cannot be

predicted.

XI. Verifying and Updating Cases

Before an attorney can cite a case to the court, it must be checked to see that it is good law (not reversed, vacated, or overruled). Shepard's is a comprehensive citation service that traces a cases's subsequent history. For each opinion, a list of cases that later cite the original opinion is provided. Treatment codes appearing to the left of the list assist the researcher in determining how the subsequent cases have interpreted the legal reasoning of the cited case. Treatment codes consist of single letters, e.g., "o" for overruled. Codes indicating that a subsequent case reversed, vacated, or overruled the cited case are the most significant treatment codes because they alert the researcher that the cited case or some part of it may no longer be relied upon. Manual "Shepardizing" requires multiple look-ups in several bound and supplemental noncumulative volumes, inviting mistakes. One of the advantages of Westlaw and Lexis is that these Shepard's searches can be done online.

This example will describe a Shepard's search online for the Ohio Supreme Court decision, State ex rel. Kokocinski v. Industrial Commission of Ohio. Under both systems, the Shepard's service is called up, using SH in Westlaw or SHEP in Lexis, followed by the citation of the case, 11 OS3D 186. A Shepard's screen will appear, listing each citing reference and treatment code.

Searchers should always check the scope of the online Shepard's coverage since it may not go back as far as the print versions. At the top of the screen in the Lexis version of Shepard's

for Kokocinski, the coverage is listed as "Shepard's 1965-82 Supplement through 1/91 Supplement." Since Kokocinski was decided in 1984, online Shepard's is as complete as the print version for this case. If an older Ohio case was being Shepardized, however, for example, one decided in 1945, print versions prior to the 1965-1982 Supplement would have to be consulted. When no citing references are found, the screen will read "No citations for [case cite]." Inexperienced searchers may misinterpret the absence of any citations as an assurance that the case they intend to rely on is still good law. Since Shepard's is not cumulative, however, the online version may not have picked up a print reference outside the scope of the online coverage in which the older case was overruled.

Shepard's lags in currency by about six months. Westlaw's Insta-Cite and Lexis's Auto-Cite services fill in this gap period by presenting any subsequent treatment of the case that has occurred during the past six months. For most lower federal court and state opinions, updated case history is available within one to six days of the court filing its opinion. To select either service, type in IC in Westlaw or AC in Lexis followed by the case citation. While Shepard's lists every case that cites the original case, Insta-Cite and Auto-Cite provide information only about cases that have had a significant impact on the cited case. The scope of these services often exceeds that of online Shepard's so that if the sole objective of the research is to determine whether a particular decision is still good law, Insta-Cite and Auto-Cite may be sufficient.

Searchers frequently ask why not just rely on Insta-Cite or Auto-Cite exclusively and forget about Shepard's? The answer is that for certain research objectives Shepard's still provides information

that the other services do not duplicate. Shepard's can identify additional cases to expand your substantive research on an issue and to develop and refine arguments derived from the cited case. Westlaw's Shepard's PreView service supplements its regular online Shepard's by providing cites to cases in the last six months which will eventually appear in Shepard's. The abbreviated PreView version does not contain treatment codes, but does give searchers the volume and page numbers of subsequent citations. Lexis does not offer a comparable service to Shepard's PreView.

The Ohio researcher should also know how to use both Westlaw and Lexis as a citator. The Shepard's system does not include unreported decisions, which, as explained in Section VII(F), make up an important part of the body of Ohio case law. Consequently, Shepardizing, either manually or online, will not alert users to cases (reported or unreported) that are cited by unreported opinions, or to unreported opinions that are cited by reported opinions. The only way to retrieve information from this underground citing network is to run the case name or citation as a search term.

XII. Economic Considerations

The structure of Westlaw and Lexis usage charges differ. Westlaw charges per minute, with rate depending on the database the user is in. Lexis charges per search, with a low constant connect charge. Searching Westlaw's state database costs $2.73 per minute. Lexis charges $19 per search in its Ohio library cases file, along with a connect and communication charge that averages $.50 per minute. Economic considerations vary according to the type of search. This section examines case retrieval searches and subject

searches.

When you want to print the text of an opinion on Lexis and you have the case citation, a LEXSEE search is always less expensive than running a name search. Karnes v. Doctors Hospital, 51 Ohio St.3d 139, can easily be retrieved using the LEXSEE command.

LEXSEE 51 OS3d 139

This search costs $4. The same case can be retrieved by performing a NAME segment search in the Ohio Supreme Court file.

NAME(KARNES AND DOCTORS)

This search costs $16. LEXSEE requires one of the parallel citations to a case reporter in which the case is published or, if the case is unreported, a Lexis cite which can be obtained by calling Lexis Customer Service. The LEXSEE command can be entered from any screen in Lexis -- it does not require you to be in an Ohio file to LEXSEE and Ohio case.

Westlaw's FIND command is similar in function to LEXSEE and can be used in two ways to retrieve the Karnes decision.

FIND 51 OS3d 139

FIND 555 NE2d 280

Note that the two citations above are parallel and either will retrieve the case you requested. You will notice differences, however, between the version of the case retrieved on Westlaw and the one from Lexis. Westlaw reproduces the version reported in volume 555 of the Northeastern Regional Reporter, 2d series, which is published by the parent company, West. Lexis retrieves the

version from the official Ohio reporter, currently published by Anderson Publishing Company in Cincinnati.

Another difference in the two retrieval systems is that the Westlaw FIND command should be entered from the database directory screen where you are being charged only for the lower connect/communication charges. If the command is entered from within the Ohio Cases file, you will be charged at the per minute usage rate for that database as well. Even if you start at the database directory screen, however, once the command is processed and the case is retrieved you are dumped into the database from which the case was retrieved and the per minute usage rates begin to accrue. Westlaw also provides its own Westlaw cites to use in finding unreported Ohio opinions which are available from customer service.

Because of Westlaw's per minute, rather than per search, charge structure, a quick TITLE field search in the appropriate database does not cost much more than a FIND search from the database directory. This differs from Lexis, where there is a substantial price differential between a NAME segment search and a LEXSEE search.

When performing subject searches, initial search results are frequently off target, requiring refinement of search strategy. Performing new searches on the same issue becomes very expensive very quickly in Lexis. Proper usage of Lexis's modification feature, however, avoids these new search charges by allowing you to edit an original search for free. The command protocols for modifying a search are explained in Section V. Modification will not be possible if the initial search fails to retrieve any hits. The original search can always be edited and rerun, but a new search charge will

be tacked on.

There are two ways to overcome this problem. First, the initial search can be constructed broadly enough to assure that some cases will be found; e.g., instead of searching for "barking dachshunds," the search would be for "dogs and nuisance." In case there are only barking beagle cases, you will be able to modify your broader original search to find them and analogize them to unruly dachshunds. A second approach would be to run a search that you know from previous experience will retrieve only one or two cases. For example, searching Section 4701.03 of the Ohio Revised Code retrieves only two cases when run in the Ohio Case file in Lexis. This search can be used as the starter search that you then modify using the OR connector to perform any other search. This latter approach protects against incurring a new search charge due to a misspelling in the initial search.

4701.03 OR (BREECH W/3 KONTRACT)

The spelling on this search may be corrected without incurring a new search charge. Because you know that searching for 4701.03 retrieves two cases, this search can then be modified. Modification would not be possible if the initial search contained only the misspelled subject search.

BREECH W/3 KONTRACT

This search would retrieve no cases and would, thus, require performing a new search.

While any starter search may be used that you know will retrieve some cases, a narrow search like 4701.03 is more desirable

than a broader initial search because the search results will be less disruptive when it comes to reviewing citation lists. The cites retrieved from a broad initial search would be interspersed with the relevant ones found through subsequent modifications. These initial search results cannot be discarded because of the use of the OR connector. The two cites found from the 4701.03 search, however, are recognized from past experience and easily segregated.

Lexis searching becomes highly economical when the modification feature is employed properly. Each modification creates a new level of results. Each level is preserved during the search and can be reviewed by using the "Display Different Level" function key. Although previous levels can be modified, a new search charge will be incurred. Only modification of the most recent level is free. Assuming successful modifications of an initial $19 search plus one hour spent online reviewing the results (approximately another $25), the total cost of $44 compares favorably with one hour of Westlaw time at a cost exceeding $120.

Westlaw searchers do not have to worry about incurring new search charges when they edit their search queries, the equivalent to modifying on Lexis, or when they enter a new search. The per minute Westlaw rate, however, can also build up quickly, placing a premium on the searchers' speed in formulating and entering search queries. Because these is no cost for performing new searches, search sessions involving multiple issues may be more economical on Westlaw. Westlaw offers a distinct economic advantage over Lexis in the area of running searches in different files. Researchers often need both state and federal decisions on a point of Ohio law. Neither Lexis nor Westlaw allows state and federal court files to be

searched simultaneously. Westlaw does have a SDB command, however, that instructs the system to run the previous search in a different file.

"PUNITIVE DAMAGE" AND OHIO

This search, run in the Ohio Cases database, can quickly be rerun in the federal district court file using the SDB command.

SDB DCT

These two Westlaw searches, including the cost of printing a citation list for each, can be done in less than five minutes for under $20. On Lexis, the same search would cost approximately $40.

XIII. Conclusion

Effective searching of any online system requires sophisticated knowledge of system features and an appreciation for the subtleties of search strategy. Most attorneys will not have the time to learn more than the basics of Westlaw and Lexis.[8] For results to best serve their clients, they should turn to information professionals -- librarians, online specialists, etc. -- who have developed expertise from working with these systems daily.

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[8]A reference guide summarizing aspects of searching Ohio case law is provided in Appendix A to assist novice searchers.

APPENDIX A

Reference Guide for Searching Ohio Case Law on Westlaw and Lexis

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CUSTOMER SERVICE

Westlaw: 1/800/937-8529

Lexis: 1/800/543-6862

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FILE STRUCTURE

Westlaw - Select OH-CS database

Lexis - The Ohio Library includes these files:

OHIO Supreme Court from 1940-

APP Courts of Appeals from 1940-

COURTS Combines OHIO and APP

For older Ohio cases and trial court opinions, see Lexis Documentation.

==========

SEARCHING SPECIFIC COURTS

Ohio Supreme Court Cases

Westlaw - In OH-CS as part of search include CO(HIGH)

Lexis - Run search in OHIO file in the Ohio Library

Ohio Courts of Appeals Cases

Westlaw - In OH-CS as part of search include CO(LOW)

Lexis - Run Search in APP file in the Ohio Library

Cases from Specific Courts of Appeals

E.g., Eighth Appellate District (Cuyahoga County)

Westlaw - In OH-CS search for COURT /S APPEAL /S CUYAHOGA

Lexis - In APP file in Ohio Library search for COURT(EIGHTH OR EIGHT OR CUYAHOGA)

==========

RETRIEVING CASES WHERE CITATION IS KNOWN

E.g., Anilas v. Kern, 31 Ohio St.3d 163, 509 N.E.2d 1267 (1987)

Westlaw - FIND 31 OS3d 163 or FIND 509 NE2d 1267

Lexis - LEXSEE 31 OS3d 163 or LEXSEE 509 NE2d 1267

For unreported Courts of Appeals opinions, call Customer Service to obtain Westlaw and Lexis case numbers and correct FIND and LEXSEE formats.

==========

UNREPORTED COURTS OF APPEALS DECISIONS

Rules for citing unreported opinions are found in the Ohio Supreme Court Rules for the Reporting of Opinions which are published in the Ohio Revised Code.

Unreported opinions do not contain West's editorial enhancements. Consequently, key numbers, synopsis, or topic searches performed on Westlaw will not retrieve unreported opinions or new slip opinions added to Westlaw before editorial enhancements have been added.

==========

SEARCH FORMULATION -- BOOLEAN OPERATORS

Westlaw and Lexis process search connectors in the following order:

1. parentheses ( )
2. or
3. within # of words (e.g., W/10 or /10 or +10)
4. same sentence or same paragraph (/S or /P) - Westlaw only
5. and
6. not

For an explanation of the order of processing, see Lexis: The Complete User's Guide, pp. 42-49 and Westlaw Reference Manual, 4th Edition, pp.44-45.

==========

PHRASE SEARCHING

Westlaw - uses quotation marks to create a phrase. Without quotation marks, Westlaw reads space between words as an "OR" connector, e.g., summary judgment as a search looks for summary or judgment.

Lexis - does not read a space as OR so quotes are unnecessary.

==========

EDITING SEARCHES

Westlaw - use new search or edit query functions. Westlaw charges flat time rate. There are no additional charges for new searches or editing of existing searches.

Lexis - use modification command (works only on an initial search which retrieves at least one case). Lexis charges for new searches, but modifications are free. To modify, enter "m" and begin next search level with "OR" to expand results or "AND" or number connector ("W/15") to narrow results.

==========

COURT SYLLABUS IN OHIO SUPREME COURT OPINIONS

Ohio Supreme Court Rules for the Reporting of Opinions 1(B) provides that the syllabus of a Supreme Court opinion states the controlling point(s) of law in the case.

Westlaw - syllabus is found in the SYNOPSIS field. CAUTION: The SYNOPSIS field contains both West's editors' synopsis of the decision (non-controlling) and the Supreme Court's syllabus (controlling).

==========

COURT SYLLABUS IN OHIO COURTS OF APPEALS OPINIONS

Syllabi in these opinions are not controlling points of law of the case but rather a summary to be used as a research and indexing aid. Ohio Supreme Court Rules for the Reporting of Opinions 2(F).

==========

AUTOMATIC EQUIVALENCIES AND MISSPELLINGS IN DATABASES

Westlaw - equivalencies are listed in the Westlaw Reference Manual, 4th Edition, pp. 493-95.

Lexis - automatic word and number equivalencies are listed in Lexis: The Complete User's Guide, p. 33.

Try to anticipate possible misspellings by using asterisk, e.g., when searching for pendant jurisdiction, search:

Westlaw - "PEND*NT JURISDICTION"

Lexis - PEND*NT JURISDICTION

==========

UPDATING AND CASE VERIFICATION

For complete coverage check (1) Shepard's, (2) Insta-Cite (Westlaw) or Auto-Cite (Lexis), and (3) Westlaw and Lexis as a citator.

Shepard's

1. Shepard's list of cited and citing cases consists of reported opinions only.

2. Enter SH or Shepard's function key followed by citation, e.g., to Shepardize Anilas v. Kern enter one of its parallel citations:

SH 31 OS3d 163
or
SH 509 NE2d 1267

3. Always check right hand corner of Shepard's screen display to see how many Shepard's screens there are for your citation, e.g., page 1 of 4.

4. Check first Shepard's screen for scope of online coverage. If citation is older than online coverage, check Shepard's print version.

5. Check Shepard's PreView (Westlaw only) by entering SP from Shepard's screen or SP and citation from any Westlaw screen, e.g.:

SP 31 OS3d 163

Shepard's PreView provides more current information than Shepard's (which has a six month lag time). Shepard's PreView lists reported cases citing your case, but does not include treatment codes.

Insta-Cite and Auto-Cite

1. Provide negative treatment history and correct citation information.

2. More current than Shepard's. Tells you if your case has been overruled in some instances as recently as within the past few days.

3. Westlaw - enter IC followed by citation.
   Lexis - enter AC followed by citation.

4. See Lexis and Westlaw documentation for correct forms when using Shepard's, Auto-Cite, and Insta-Cite.

Using Westlaw and Lexis as Citators

1. Run parties' names in combination with other citation information as search terms in Ohio case files/database to find (1) unreported opinions citing reported or other unreported opinions, or (2) reported opinions citing unreported opinions.

2. Purpose - picks up cases not tracked by Shepard's, Insta-Cite, and Auto-Cite.

3. Since judges and authoring law clerks often fail to use proper citation format, citator searches should be constructed flexibly.

4. For cases containing fairly unique names, e.g., Anilas v. Kern, search

Westlaw - ANILAS /S KERN
Lexis - ANILAS W/10 KERN

5. For common names, e.g., Smith v. Jones, add restrictions to limit retrieved cases to those citing your case.

Names and Date: SMITH /S JOHNSON /S 1986

Names and Court: SMITH /S JOHNSON /S CUYAHOGA

Names and Case Reporter Number:
SMITH /S JOHNSON /S 43 +5 164

APPENDIX B

Sample West Key Number Index

Analysis

I. REQUISITES AND VALIDITY, ⇐1–142.

A. Nature and Essentials in General, ⇐1–10. [These are the key numbers.]
B. Parties, Proposals, and Acceptance, ⇐11–29.
C. Formal Requisites, ⇐30–46.
D. Consideration, ⇐47–91.
E. Validity of Assent, ⇐92–100.
F. Legality of Object and of Consideration, ⇐101–142.

II. CONSTRUCTION AND OPERATION, ⇐143–235.

A. General Rules of Construction, ⇐143–176.
B. Parties, ⇐177–188.
C. Subject-Matter, ⇐189–206.
D. Place and Time, ⇐207–217.
E. Conditions, ⇐218–227.
F. Compensation, ⇐228–235.

III. MODIFICATION AND MERGER, ⇐236–248.

IV. RESCISSION AND ABANDONMENT, ⇐249–274.

V. PERFORMANCE OR BREACH, ⇐275–323.

VI. ACTIONS FOR BREACH, ⇐324–355.

I. REQUISITES AND VALIDITY.

A. Nature and Essentials in General.

⇐1. Nature and grounds of contractual obligation.
2. What law governs.
3. Express contract.
4. Implied contract.
5. Constructive or quasi contract.
6. Executed contract.
7. Nature of subject-matter.
8. Existence and condition of subject-matter.
9. Certainty as to subject-matter.
   (1). In general.
   (2). Services and compensation therefor.
   (3). Place and time.
10. Mutuality of obligation.
   (1). In general.
   (2). Building, manufacturers, and services.
   (3). Contracts of carriage.
   (4). Sales in general.
   (5). Sales and conveyances of land.
   (6). Loans and advances.
   (7). Slot machine contract.

I. REQUISITES AND VALIDITY—Continued.

B. Parties, Proposals, and Acceptance.

⇐11. Capacity to contract in general.
12. Contract in particular capacity.
13. Number of parties.
14. Intent of parties.
15. Necessity of assent.
16. Offer and acceptance in general.
17. Request or advertisement for proposals.
18. Making and communication of offer.
19. Revocation or withdrawal of offer.
20. Lapse of offer.
21. Rejection of offer.
22. Acceptance of offer and communication thereof.
    (1). In general.
    (2). Acceptance shown by signature.
    (3). Necessity of communicating acceptance.
23. Qualified or conditional acceptance of offer.
24. Acceptance varying from offer.
25. Agreement to make contract in future.
26. Contracts by correspondence.
27. Implied agreements.
28. Evidence of agreement.
    (1). Presumptions and burden of proof.
    (2). Admissibility.
    (3). Weight and sufficiency.
29. Questions for jury.

C. Formal Requisites.

⇐30. Form as element of contract.
31. Necessity of writing in general.
32. Agreements to be reduced to writing.
33. Form and contents of instrument.
34. Execution.
35. Signature.
36. Seal.
37. Attestation.
38. Affixing revenue stamps.
39. Incomplete instruments.
40. Several instruments.
41. Confirmation or ratification of defective instrument.
42. Delivery.
43. Acceptance.
44. Filing or recording.
45. Evidence.
46. Questions for jury.

D. Consideration.

⇐47. Necessity in general.
48. Contracts under seal.

buyer's promise to purchase steel was not illusory.—Roth Steel Products v. Sharon Steel Corp., 705 F.2d 134.

⇐10(5). Sales and conveyances of land.

Ohio App. 1980. Where enforceability of real estate purchase contract is contingent upon inspection of premises by Veterans Administration, with further provision that any necessary repair work as result of inspection may be done at vendor's expense or, at vendor's option, agreement may be terminated, vendor's promise is not illusory for vendor's power to terminate contract is not unlimited.—Century 21 American Landmark, Inc. v. McIntyre, 427 N.E.2d 534, 68 Ohio App.2d 126, 22 O.O.3d 141.

⇐10(7). Slot machine contract.

Ohio Com.Pl. 1981. There was sufficient mutuality of obligation between vending machine company and proprietor of bar with respect to contracts under which company promised to install, operate and service cigarette machines and other coin-operated equipment at bar and proprietor promised that he would not permit any other vending equipment on his premises during five-year term of the contracts.—AAV-Corson Service Co. v. Smith, 444 N.E.2d 1362, 3 Ohio Misc.2d 11, 3 O.B.R. 422.

(B) PARTIES, PROPOSALS, AND ACCEPTANCE.

Library references

C.J.S. Contracts § 27.

⇐14. Intent of parties.

C.A.Ohio 1976. Under Ohio law, both parties must have a clear understanding of the terms of an agreement and an intention to be bound by its terms before an enforceable contract is created.—Arnold Palmer Golf Co. v. Fuqua Industries, Inc., 541 F.2d 584.

Determination whether parties intended to enter a contract must be based on an evaluation of the circumstances surrounding the parties' discussions.—Id.

D.C.Ohio 1976. Commercial printing corporation's lack of knowledge of photofinishing corporation's president's intention to execute contract on behalf of another corporation, not yet formed, was not a mere mistake of fact resulting from some ambiguity in terms of printing contract but rather constituted a misunderstanding, bordering upon intentional calculated misrepresentation, as to representative capacity of the contracting parties, and thus under objective theory of mutual assent, photofinishing corporation was bound by oral contract to pay for printing of flyers for mail order sale of jewelry.—Perlmuter Printing Co. v. Strome, Inc., 436 F.Supp. 409.

Bkrtcy.Ohio 1984. Both parties must have a clear understanding of terms of agreement and intention to be bound thereby before an enforceable contract is created.—In re Taco Eds, Inc., 41 B.R. 693.

⇐15. Necessity of assent.

D.C.Ohio 1984. Where parties to proposed franchise agreement could not agree on terms of agreement, type, number or price of stocks or manner in which to provide franchisor compensation for costs attendant to related litigation and were not able to reach agreement on allocation of voting power in new company, no enforceable oral contract was formed.—American Nursing Care of Toledo, Inc. v. Leisure, 609 F.Supp. 419.

Bkrtcy.Ohio 1984. Both parties must have a clear understanding of terms of agreement and intention to be bound thereby before an enforceable contract is created.—In re Taco Eds, Inc., 41 B.R. 693.

Ohio 1982. To constitute a valid contract there must be a meeting of the minds and there must be an offer on the one side and acceptance on the other.—Noroski v. Fallet, 442 N.E.2d 1302, 2 Ohio St.3d 77, 2 O.B.R. 632.

⇐16. Offer and acceptance in general.

D.C.Ohio 1980. A unilateral contract does not come into existence until one party to it has done all that is necessary on his part.—United Steel Workers of America, Local No. 1330 v. U. S. Steel Corp., 492 F.Supp. 1.

D.C.Ohio 1976. Where essential contract terms of quantity, price, date, and place of delivery were determined at meeting between parties, conduct of the parties manifested their agreement that commercial printing corporation would print 17 million flyers for mail order sale of jewelry and photofinishing corporation's president's direction to printing corporation's president to begin printing "as soon as possible" manifested words and conduct sufficient to constitute binding oral contract. N.J.S.A. 12A:2-204; R.C.Ohio § 1302.07.—Perlmuter Printing Co. v. Strome, Inc., 436 F.Supp. 409.

Ohio 1982. To constitute a valid contract there must be a meeting of the minds and there must be an offer on the one side and acceptance on the other.—Noroski v. Fallet, 442 N.E.2d 1302, 2 Ohio St.3d 77, 2 O.B.R. 632.

Ohio App. 1988. "Offer" is manifestation of willingness to enter into bargain, so made as to justify another person in understanding that assent to that bargain is invited and will conclude it.—Leaseway Distribution Centers, Inc. v. Department of Administrative Services, 550 N.E.2d 955, 49 Ohio App.3d 99.

Ohio App. 1985. Client-ownership provision in accounting firm's personnel manual was unilateral expression of company policy and created option for employees leaving the firm to purchase clients, but did not create an enforceable duty to do so.—Cohen & Co., CPAs v. Messina, CPA, 492 N.E.2d 867, 24 Ohio App.3d 22, 24 O.B.R. 44.

Ohio App. 1984. Written representation, whether standing alone or given in conjunction with other verbal assurances, can be "offer" if usual contract tests are satisfied.—Bolling v. Clevepak Corp., 484 N.E.2d 1367, 20 Ohio App.3d 113, 20 O.B.R. 146.

Ohio App. 1984. A "unilateral contract" contemplates an offer which is accepted by performance of the stated terms or conditions therein, rather than by a return promise to perform.—Helle v. Landmark, Inc., 472 N.E.2d 765, 15 Ohio App.3d 1, 15 O.B.R. 22.

Ohio App. 1983. "Option" is agreement to keep offer open for specified time; it limits customary power of offeror to revoke his offer prior to its acceptance.—Ritchie v. Cordray, 461 N.E.2d 325, 10 Ohio App.3d 213, 10 O.B.R. 287.

Although acceptance of main offer contained in option contract is not operative until received by offeror and general rule is that, where offer prescribes place, time, or manner of acceptance, those terms must be strictly complied with by offeree, strict compliance can be waived by offeror.—Id.

⇐19. Revocation or withdrawal of offer.

Ohio App. 1987. Offer which is unsupported by consideration is subject to revocation at any time.—Foster v. Ohio State University, 534 N.E.2d 1220, 41 Ohio App.3d 86.

Ohio App. 1983. "Option" is agreement to keep offer open for specified time; it limits customary power of offeror to revoke his offer prior to its acceptance.—Ritchie v. Cordray, 461 N.E.2d 325, 10 Ohio App.3d 213, 10 O.B.R. 287.

These are headnote:

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APPENDIX C

Case Law Example of Westlaw SYNOPSIS Field

Citation	Rank(R)	Page(P)	Database	Mode
522 N.E.2d 489	R 6 OF 12	P 1 OF 71	OH-CS	P
36 Ohio St.3d 100				

(CITE AS: 522 N.E.2D 489)

VAN FOSSEN, et al., Appellees,

v.

BABCOCK & WILCOX COMPANY, Appellant, et al.

No. 87-624.

Supreme Court of Ohio.

April 13, 1988.

Synopsis

(West produced case summary)

Employee who was injured while backing down stairway to machinery brought tort action against employer. The Court of Common Pleas, Summit County, granted summary judgment in favor of employer, and employee appealed. The Court of Appeals reversed, and finding its decision to be in conflict, certified record. The Supreme Court, Holmes, J., held that: (1) amendment to workers' compensation statute which removed employee's potential cause of action against his employer by imposing new, more difficult standard for "intent" requirement of intentional tort could not be retroactively applied, and (2) employee could not maintain intentional tort action but rather was restricted to workers' compensation remedy. [This language is not a controlling part of the opinion.]

Reversed.

Herbert R. Brown, J., filed opinion concurring in part and dissenting in part.

Douglas, J., filed dissenting opinion.

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[The Court's Syllabus appearing after the digests below is also part of the synopsis field.]

(CITE AS: 522 N.E.2D 489)

Sweeney, J., dissented.

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522 N.E.2d 489 R 6 OF 12 P 3 OF 71 OH-CS P
(CITE AS: 522 N.E.2D 489)
[1]
413K58
WORKERS' COMPENSATION
K. Effect of acts on other statutory or common law rights of action and defenses.
Ohio 1988.
Case remains "pending in any court," for purposes of workers' compensation statute, at least until entry of final judgment by Court of Appeals considering case upon appeal of right. R.C. s 4121.80(H).
VAN FOSSEN v. Babcock & Wilcox Co.
522 N.E.2d 489, 36 Ohio St.3d 100
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522 N.E.2d 489 R 6 OF 12 P 4 OF 71 OH-CS P
(CITE AS: 522 N.E.2D 489)
[2]
92K46(1)
CONSTITUTIONAL LAW
K. In general.
Ohio 1988.
Issue of whether statute may constitutionally be applied retrospectively does not arise until there has been prior determination that legislature has specified that statute so apply.
Van Fossen v. Babcock & Wilcox Co.
522 N.E.2d 489, 36 Ohio St.3d 100
COPR. (C) WEST 1991 NO CLAIM TO ORIG. U.S. GOVT. WORKS

522 N.E.2d 489 R 6 OF 12 P 13 OF 71 OH-CS P
(CITE AS: 522 N.E.2D 489, *491)

*491 Syllabus by the Court

1. The issue of whether a statute may constitutionally be applied retrospectively does not arise unless there has been a prior determination that the General Assembly specified that the statute so apply. Upon its face, R.C. 1.48 establishes a threshold analysis which must be utilized prior to inquiry under Section 28, Article II of the Ohio Constitution. (Kiser v. Coleman [1986], 28 Ohio St.3d 259, 262, 28 OBR 337, 339-340, 503 N.E.2d 753, 756, approved and followed; Wilfong v. Batdorf [1983], 6 Ohio St.3d 100, 6 OBR 162, 451 N.E.2d 1185; and French v. Dwiggins [1984], 9 Ohio St.3d 32, 9 OBR 123, 458 N.E.2d 827, to the extent inconsistent herewith, modified.)

2. The issue of whether a statute may constitutionally be applied retrospectively does not arise until there has been a prior determination that the General Assembly has specified that the statute so apply. R.C. 4121.80 contains the clearly expressed intent of the General Assembly that it be applied retrospectively.

3. Analysis of whether a statute is unconstitutionally retroactive in violation of Section 28, Article II of the Ohio Constitution requires an initial determination of whether that statute is substantive or merely remedial. While in some cases the line between substantive and remedial may be difficult to ascertain, these terms, as applied, provide readily

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[Even though the Court Syllabus begins at the top of this page, it is part of the synopsis field beginning on the first page. A synopsis field search searches both West's case summary and the Court's Syllabus.]

522 N.E.2d 489 R 6 OF 12 P 14 OF 71 OH-CS P
(CITE AS: 522 N.E.2D 489, *491)

distinguishable contours. (Wilfong v. Batdorf [1983], 6 Ohio St.3d 100, 6 OBR 162, 451 N.E.2d 1185, to the extent inconsistent herewith, overruled.)

4. R.C. 4121.80(G) removes an employee's potential cause of action against his employer by imposing a new, more difficult standard for the "intent" requirement of a workers' compensation intentional tort than that established in Jones v. VIP Development Co. (1984), 15 Ohio St.3d 90, 15 OBR 246, 472 N.E.2d 1046. This new standard constitutes a limitation, or denial of, a substantive right, and consequently causes the statute to fall within the ban against retroactive laws established by Section 28, Article II of the Ohio Constitution. (Smith v. New York Central RR. Co. [1930], 122 Ohio St. 45, 170 N.E. 637; State, ex rel. Slaughter v. Indus. Comm. [1937], 132 Ohio St. 537, 8 O.O. 531, 9 N.E.2d 505; and Weil v. Taxicabs of Cincinnati, Inc. [1942], 139 Ohio St. 198, 22 O.O. 205, 39 N.E.2d 148, approved and followed.)

5. Within the purview of Section 8(A) of the Restatement of the Law 2d, Torts, and Section 8 of Prosser & Keeton on Torts (5 Ed.1984), in order to establish "intent" for the purpose of proving the existence of an intentional tort committed by an employer against his employee, the following must be demonstrated: (1) knowledge by the employer of the existence of a dangerous process, procedure, instrumentality or condition within its business operation; (2) knowledge by the employer that if the employee is subjected by his employment to such dangerous process, procedure, instrumentality or

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condition, then harm to the employee will be a substantial certainty and not just a high risk; and (3) that the employer, under such circumstances, and with such knowledge, did act to require the employee to continue to perform the dangerous task.

6. To establish an intentional tort of an employer, proof beyond that required to prove negligence and beyond that to prove recklessness must be established. Where the employer acts despite his knowledge of some risk, his conduct may be negligence. Where the risk is great and the probability increases that particular consequences may *492 follow, then the employer's conduct may be characterized as recklessness. As the probability that the consequences will follow further increases, and the employer knows that injuries to employees are certain or substantially certain to result from the process, procedure or condition and he still proceeds, he is treated by the law as if he had in fact desired to produce the result. However, the mere knowledge and appreciation of a risk--something short of substantial certainty--is not intent. (Blankenship v. Cincinnati Milacron Chemicals, Inc. [1982], 69 Ohio St.2d 608, 23 O.O.3d 504, 433 N.E.2d 572; and Jones v. VIP Development Co. [1984], 15 Ohio St.3d 90, 15 OBR 246, 472 N.E.2d 1046, explained.)

7. Upon motion for summary judgment pursuant to Civ.R. 56, the burden of establishing that the material facts are not in dispute, and that no genuine issue of fact exists, is on the party moving for summary judgment. Harless v.

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Willis Day Warehousing Co. (1978), 54 Ohio St.2d 64, 8 O.O.3d 73, 375 N.E.2d 46. However, in that Civ.R. 56(E) requires that a party set forth specific facts showing that there is a genuine issue for trial, such party must so perform if he is to avoid summary judgment. Accordingly, in an action by an employee against his employer alleging an intentional tort, upon motion for summary judgment by the defendant employer, the plaintiff employee must set forth specific facts which show that there is a genuine issue of whether the employer had committed an intentional tort against his employee.

[Opinion] On February 21, 1983, appellee Robert Van Fossen, an employee of appellant, Babcock & Wilcox, a McDermott Company, was working on a gear-driven position manufactured by Aronson Machine Company. A set of steps had been welded to the rear of the machine, leading up to a platform on which Van Fossen was working. After working approximately one hour, Van Fossen, while backing down these steps, slipped and fell backwards. He incurred serious injuries. Based upon his injuries, Van Fossen applied for and apparently received workers' compensation benefits.

The subject steps had been welded onto the platform in 1968 by David K. Bailey, a fellow employee of Van Fossen. Bailey designed the steps and he installed them both for his own convenience and the convenience of others, at a time when he was assigned to use the machine. He stated that he had never had any problem in the use of the steps, and that there had never been any

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APPENDIX D

Sample Westlaw and Lexis Opinions: Anilas v. Kern

Citation | Rank(R) | Database | Mode
509 N.E.2d 1267 | R 1 OF 3 | OH-CS | P
31 Ohio St.3d 163, 31 O.B.R. 366
(CITE AS: 509 N.E.2D 1267)

ANILAS, INC., Appellant,
v.
KERN, et al., Appellees.
No. 86-152.
Supreme Court of Ohio.
July 8, 1987.

[Synopsis] Lessor, a Kansas corporation, filed suit for breach of construction equipment lease against Ohio corporation. Lessor amended complaint seeking judgment setting aside conveyance of real property from coguarantor of lease to her daughter. After Kansas court granted default judgment against coguarantor, lessor asked Ohio court to give full faith and credit to default judgment as part of its decision in fraudulent conveyance action against coguarantor. The Court of Common Pleas, Wood County, ordered that Kansas default judgment be given full faith and credit, and coguarantor appealed. The Court of Appeals reversed. On motion to certify the record, the Supreme Court, 28 Ohio St.3d 165, 502 N.E.2d 1025, affirmed. On rehearing, the Supreme Court held that coguarantor had sufficient minimum contacts with Kansas to render her subject to personal jurisdiction of Kansas court.

Reversed and remanded.

Douglas, J., concurred in judgment only.

Locher, J., dissented and filed opinion in which Sweeney, Acting C.J., joined.

[Headnote] 106K12(2.20) [Key Number]
COURTS [Topic]
K. Persons acting in representative capacity, jurisdiction of; fiduciary shield.
Ohio 1987.
Corporate officer, who signed construction equipment lease agreement in her capacity as guarantor and shareholder, and who knew corporate headquarters of other contracting party to be located in foreign state, had sufficient contact to subject herself to personal jurisdiction of foreign state court, where contract provided that any breach of agreement would be deemed to be made in foreign state; fact that officer had no part in negotiations, all of which occurred inside Ohio, was not dispositive where officer's actions were not consistent with those of one ignorant of business affairs and consequential legal obligations. U.S.C.A. Const.Amend. 14.

ANILAS, Inc. v. Kern
509 N.E.2d 1267, 31 Ohio St.3d 163, 31 O.B.R. 366

[Opinion] *1268 On May 1, 1981, appellant, Anilas, Inc. ("Anilas"), a Kansas corporation, entered into an agreement with D.K.E., Inc., an Ohio corporation, for the lease of certain construction equipment. The lease provided in pertinent part that the equipment would be located in Perrysburg, Ohio; that D.K.E would make sixty equal monthly payments to Anilas at its Kansas headquarters; and that any default in performance " * * * shall be deemed to be a breach of this contract, and the breach shall be deemed to be made in Salina, Kansas." Defendant-appellee, Elvira Kern, wife of D.K.E. president, Dan Kern, signed the lease as a guarantor and indicated her position as secretary of D.K.E., Inc.

A number of payments were sent by D.K.E. to Anilas' home office in Salina,

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1ST CASE of Level 1 printed in FULL format.

ANILAS, INC., APPELLANT, v. KERN ET AL., APPELLEES
Anilas, Inc. v. Kern

No. 86-152

Supreme Court of Ohio

31 Ohio St. 3d 163; 509 N.E.2d 1267; 31 Ohio B. Rep. 366

July 8, 1987, Decided

PRIOR HISTORY:
APPEAL from the Court of Appeals for Wood County. ON REHEARING. nl nl See 28 Ohio St. 3d 165, 28 OBR 257, 502 N.E. 2d 1025. On May 1, 1981, appellant, Anilas, Inc. ("Anilas"), a Kansas corporation, entered into an agreement with D.K.E., Inc., an Ohio corporation, for the lease of certain construction equipment. The lease provided in pertinent part that the equipment would be located in Perrysburg, Ohio; that D.K.E. would make sixty equal monthly payments to Anilas at its Kansas headquarters; and that any default in performance "* * * shall be deemed to be a breach of this contract, and the breach shall be deemed to be made in Salina, Kansas." Defendant-appellee, Elvira Kern, wife of D.K.E. president, Dan Kern, signed the lease as a guarantor and indicated her position as secretary of D.K.E., Inc. A number of payments were sent by D.K.E. to Anilas' home office in Salina, Kansas. However, D.K.E. ultimately defaulted on the agreement. Thereafter, Anilas filed an action for breach in the Court of Common Pleas of Wood County, Ohio, against D.K.E., Inc. and Dan Kern, individually. After judgment was obtained, it was determined that significant assets had been owned by Elvira Kern, and transferred as a gift to her daughter prior to the entry of judgment. The daughter had transferred the property to the Harrison Lumber Company, another creditor of the Kerns. Appellant then filed suit against Elvira Kern in the District Court of Saline County, Kansas. Service of process was obtained upon her on October 19, 1983, at her residence. Having received no response, the Kansas court granted a default judgment against Mrs. Kern. Appellant brought suit in the Wood County, Ohio Court of Common Pleas both to enforce the judgment of the Kansas court and to request the court to set aside, as fraudulent, the conveyance from Elvira Kern to her daughter. The trial court found for appellant on both issues. The Court of Appeals for Wood County reversed, holding that the Kansas judgment was not entitled to full faith and credit because Mrs. Kern had not established sufficient "minimum contacts" with the state of Kansas which would entitle Kansas courts to jurisdiction in personam over her. This cause is now before the court pursuant to the allowance of a motion to certify the record.

DISPOSITION: Judgment reversed and cause remanded.

Judgment reversed and cause remanded.

HEADNOTES: Civil procedure -- Personal jurisdiction -- Sufficient minimum contacts established, when -- Foreseeability and locus of breach clause are significant factors.

COUNSEL: Knepper, White, Arter & Hadden, R. Douglas Wrightsel and William A. Adams, for appellant.

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